IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1169 OF 2005

Nazir Mohammad Inamdar ..Appellant.

Vs.

The State of Maharashtra ..Respondent.

Mr. R.S. Kate for the Appellant.

Mr. S.R. Shinde, APP for the Respondent.

CORAM : R.S. MOHITE, J.

DATED : 28TH FEBRUARY, 2006.

P.C.:

1. Heard the learned Advocate for the Appellant and learned APP for the State. Perused the record and proceedings, which had been called for.

2. This Appeal impugns the judgment and order dated 08.12.2005 passed by the learned IInd Ad-hoc Additional Sessions Judge, Satara, convicting the accused for the offences punishable under section 20(a)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to undergo rigorous imprisonment for three years and to pay fine of Rs. 10,000/-, in default of payment to suffer further R.I. for six months.

3. On perusal of the impugned judgement and order, it is found that the conviction is based on cogent and sufficient evidence. The raid was carried in this case, by PW-4 Prakash Satpute, API on receiving information that the appellant was plucking the leaves of ganja in his field- Gat No. 105. The ganja was planted in the crop of jawar and turmeric. The information was reduced into writing by PW-4 and then he had informed the S.D.P.O. -Jadhav on phone. He, thereafter, called the Police Constable, two panchas, photographer and weight and measurers and proceeded to the spot alongwith them. The accused was caught red-handed of plucking leaves of ganja. He refused a personal search and informed the police party that Gat No. 105 belongs to him. On a search of the field, ganja plants were found in the jawar and turmeric crops. A photographer by name Sanjay Mate, who has been examined by the prosecution as PW-2, took several photographs, which are exhibited and which indicate the presence of the accused in his field /land. While the work of taking photographs was being done, Dy. S.P. Shri Jadhav, the superior officer, joined in the field and was personally present at that time.

4. It was sought to be contended that Gat No. 105

was a joint ownership land of the applicant and his brother. It was argued that his brother was not made as an accused in this case and therefore, the benefit of doubt ought to have been given to the appellant. The trial court has relied upon the evidence of PW-5 Shashikant Phirange, who is a Talathi of the village and who has confirmed that though the accused and his brother had 8 anna share each in Gat No. 105; the eastern portion of Gat No. 105 was in the cultivation of the accused and the western portion was in the cultivation of his brother Badshah Mohammad. However, in the present case, the evidence further indicates that the accused was found on the spot. An attempt was made to argue that there is violation of section 42 (2) of NDPS Act, as information was not sent to the superior officer. This aspect has been dealt with by the trial court. The concerned superior officer who was senior to the investigating officer, was present on the spot and the trial court has rightly placed reliance on the judgment of the Apex Court; that has indicated that the provisions of section 42(2) were not applicable in such a case. The accused had taken a defence that on the day and time of the raid, he had gone to the civil hospital as on that day the delivery of his daughter taken place. This defence has been rightly discarded by the trial court, as no documentary evidence from the hospital has

been produced on record to that effect.

5. In this view of the matter, there is no substance in the appeal and the appeal is dismissed in limine.

28.02.06 (R.S.Mohite,J).

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